GOVERNMENT EMPLOYEES HAVE NO RIGHT TO STRIKE

By Sen. Ambrosio Padilla

The Manila Times issue of March 20, 1987 published an item, entitled "*Strike* fever hits gov't offices" -

> "STRIKE fever has hit a number of government offices for the past few weeks.
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> The newest strikes were staged yesterday by personnel of the Southern Tagalog regional office of the Department of Agriculture and the National Science and Technology Authority (NSTA)." (p. 1)

The news item mentions various government offices, such as Western Mindanao regional office of Department of Natural Resources, forestry *bureau* in Quezon City and Zamboanga City, NSTA agencies, the Philippine Council for Agriculture and Resource Research and Development (PCARRD), National Research Council of the Philippines (NRCP), Philippine Invention Development Institute (PIDI), Science Promotion Institute (SPI), National Institute of Science and Technology (NIST), Materials Science Research Institute (MSRI) and Special Projects Services (SPS) (pp. 1-2, The Manila Times, March 20, 1987).

My legal article entitled "The New Constitution on the Rights to Association, Collective Bargaining and Strike", dated December 24, 1986, submits that the right of the people to form *associations* includes employees in the public and private sectors (Sec. 8, Art. III, Bill of Rights), but "the right to strike in accordance with law" (Sec. 3, Art. XIII, on *Labor* under Social Justice and Human Rights) is *not* extended to government employees under the *civil service* law (Sec. 2 (1), Art. IX). My article concludes:

> "The right to *strike* is not recognized to civil service employees, for the functions of government, which are public and governmental, must not be impaired nor prejudiced. The suspension of public services, however temporary, is against or inimical to the national interest."[1]

The new Constitution provides in Art. III, sec. 8 -

> "Sec. 8. The right of the people, including those employed in the public and private sectors, to form unions, associations, or societies for purposes not contrary to law shall not be abridged."

"The right to self-organization shall not be denied to government employees" (Art. IX, sec. 2 (5). The Civil Service (Art. IX - B) provides:

> "Sec. 2. (1) The civil service embraces all branches, subdivisions, instrumentalities, and agencies of the Government, including government-owned or controlled corporations with original charters."

There must be a distinction between governmental and proprietary functions. The Supreme Court interpreting similar provisions of the 1973 Constitution stated in the case of Alliance of

Government Workers vs. Minister of Labor and Employment, 82 O.G. 6098, August 3, 1983, reported in *124 SCRA 1:*

> "The issue raised in this petition, however, is more basic and fundamental than a mere ascertainment of intent or a construction of statutory provisions. It is concerned with revisiting of the traditional classification of government employment into governmental and proprietary functions and of the many ramifications that this dichotomous treatment presents in the handling, if concerted activities, *collective bargaining* and *strikes* by government employees to wrest concessions in compensation, fringe benefits, hiring and firing, and other terms and conditions of employment."
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> "The workers in the respondent institutions have not directly petitioned the heads of their respective offices nor their representatives in the Batasang Pambansa. They have acted through a labor federation and its affiliated unions. In other words, the workers and employees of these state firms, college, and university are taking collective action through a labor federation which uses the bargaining power of organized labor to secure increased compensation for its members."
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> "Under the present state of the law and pursuant to the express language of the Constitution, this resort to concerted activity with the ever present threat of a *strike* can no longer be allowed." (pp. 12-13)

Said decision further held:

> "The general rule in the past and up to the present is that 'the terms and conditions of employment in the Government, including any political subdivision or instrumentality thereof are governed by law' (Section 11, the Industrial Peace Act, R.A. No. 875, as amended and Article 277, the Labor Code, P.D. No. 442, as amended). Since the terms and conditions of government employment are fixed by law, government workers cannot use the same weapons employed by workers in the private sector to secure concessions from their employers. The principle behind labor unionism in private industry is that industrial peace cannot be secured through compulsion by law. Relations between private employers and their employees rest on an essentially voluntary basis. Subject to the minimum requirements of wage laws and other labor and welfare legislation, the terms and conditions of employment in the unionized private sector are settled through the process of collective bargaining. In government employment, however, it is the legislature and, where properly given delegated power, the administrative heads of government which fix the terms and conditions of employment. And this is effected through statutes or administrative circulars, rules, and regulations, not through collective bargaining agreements." (p. 13)

The decision likewise held:

> "Personnel of government-owned or controlled corportions are now part of the civil service. It would not be fair to allow them to engage in concerted activities to wring higher salaries or fringe benefits from Government even as other civil service personnel such as the hundreds of thousands of public school teachers, soldiers, policemen, health personnel, and other government workers are denied the right to engage in similar activities."
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> "For instance, the Supreme Court is trying its best to alleviate the financial

difficulties of courts, judges, and court personnel in the entire country but it can do so only with the limits of budgetary appropriations. Public school teachers have been resorting to what was formerly unthinkable, to mass leaves and demonstrations, to get not a 13th-month pay but promised increases in basic salaries and small allowances for school uniforms. The budget of the Ministry of Education, Culture and Sports has to be supplemented every now and then for this purpose. The point is, salaries and fringe benefits of those embraced by the civil service are fixed by law. Any increases must come from law, from appropriations or savings under the law, and not from concerted activity." (pp. 15-16)

Said decision quotes from Agricultural Credit and Cooperative Financing Administration vs. Confederation of Unions in Government Corporations and Offices, 30 SCRA 649.

"The ACA is a government office engaged in government not proprietary functions. There can be no dispute as to the fact that the land reform program contemplated in the Land Reform Code is beyond the capabilities of any private enterprise to translate into reality. It is a purely governmental function, no less than, say, the establishment and maintenance of public schools and public hospitals. And when, aside from the governmental objectives, of the ACA, geared as they are to the implementation of the land reform program of the State, the law itself declares that the ACA is a government office, with the formulation of policies, plans and programs vested no longer in a Board of Governors, as in the case of the ACCFA, but in the National Land Reform Council, itself a government instrumentrality; and that its personnel are subject to Civil Service Laws and to rules of standardization with respect to positions and salaries, any vestige of doubt as to the governmental character of its functions disappears." (syll., p. 650)

Said decision also quotes the case of *Bacani* vs. *National Coconut Corporation*, 53 O.G. 2798, 100 Phil. 468, which held:

"The question now to be determined is whether the National Coconut Corporation may be considered as included in the term 'Government of the Republic of the Philippines' for the purposes of the exemption of the legal fees provided for in Rule 130 of the Rules of Court.

"As may be noted, the term 'Government of the Republic of the Philippines' refers to a government entity through which the functions of government are exercised including the various arms through which political authority is made effective in the Philippines, whether pertaining to the central government or to the provincial or municipal branches or other form of local government. This requires a little di"gression on the nature and functions of our government as instituted in our Constitution.

"To begin with, we state that the term 'Government' may be defined as 'that institution or aggregate of institutions by which an independent society makes and carries out those rules of action which are necessary to enable men to live in a social state, or which are imposed upon the people forming that society by those who possess the power or authority of prescribing them' (U.S. vs. Dorr, 2 Phil. 332). This institution, when referring to the national government, has reference to what our Constitution has established composed of three great departments, the legislative, executive, and the judicial, through which the powers and functions of government are exercised. These functions are

two fold: constituent and ministrant. The former are those which constitute the very bonds of society and are compulsory in nature; the latter are those that are undertaken only by way of advancing the general interests of society, and are merely optional." (p. 471-472)

The decision in the Alliance case, 124 SCRA 1, recognizes the freedom of association, but not the right to collective bargaining and much less the right to strike -

> "Our dismissal of this petition should not, by any means, be interpreted to imply that workers in government-owned and controlled corporations or in state colleges and universities may not enjoy freedom of association. The workers whom the petitioners purport to represent have the right, which may not be abridged, to form associations or societies for purposes not contrary to law. (Constitution, Art. IV, Section 7). This is a right they share with all public officers and employees and, in fact, by everybody living in this country. But they may not join associations which impose the obligation to engage in concerted activities in order to get salaries, fringe benefits, and other emuluments higher than or different from that provided by law and regulation." (p. 19)

The new (1987) Constitution recognizes the right of the people, including the public sector to form associations (sec. 8, Art. III, Bill of Rights). This right is also recognized to civil services employees (sec. 2 (1), par. 5, Art. IX, B). But the right to collective bargaining and the "right to strike in accordance with law", recognized as rights of labor in private industries (sec. 3, Art. XIII, on Social Justice and Human Rights) are not extended to civil service employees of the Government in Departments, Bureaus, Offices and other Agencies performing governmental functions.

In view of the "strike fever" in Government offices, the civil service employees in the government service who are engaged in the performance of public functions must be reminded that, in the exercise of their right to form associations (sec. 8, Art. III) and to petition for redress of grievances (sec. 4) they cannot legally exercise the right of labor in private industry to collective bargaining agreement (CBA), and much less resort to the right to strike.

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1/p. 5, The New Constitution on the Rights to Association, Collective Bargaining and Strike dated Dec. 24, 1986.